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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,039	02/20/2002	Jack J. Richards	4244P2431	9546
23504	7590	05/18/2004	EXAMINER	
WEISS & MOY PC 4204 NORTH BROWN AVENUE SCOTTSDALE, AZ 85251			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER

1771

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/082,039	RICHARDS, JACK J.	
	Examiner	Art Unit	
	Cheryl Juska	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-9, 11-25, and 27-29 is/are rejected.
- 7) ☒ Claim(s) 10 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed March 1, 2004, has been entered. Claims 18, 19, 21, and 29 have been amended as requested. The pending claims are 1-29, with claims 1, 11, 18, 23, 27, and 29 being independent claims.
2. Applicant's amendment to claims 18 and 29 are sufficient to withdraw the rejection of claims 18, 22, and 29 as being anticipated by Bergstrom (US 3,718,528) as set forth in section 3 of the last Office Action. Specifically, Bergstrom teaches a light permeable laminate which is contrary to the presently amended claims. Additionally, the 103 rejections based upon Bergstrom set forth in section 7 is also hereby withdrawn.
3. Furthermore, applicant's arguments with respect to the anticipation rejection of claims 18, 19, 22, and 29 by Poettgen (Re. 34,816) has been found persuasive. Specifically, Poettgen does not teach the presently claimed two outer fabric layers, but rather teaches a single fabric layer on either outer surface. Hence, the 102 rejection set forth in section 2 of the last Office Action, the 102/103 rejection set forth in section 5, and the 103 rejection set forth in section 6 are hereby withdrawn.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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5. Claims 18-22 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Poettgen reference (Re. 34,816).

Claims 18, 19, 22, and 29 were previously rejected under 102, claim 20 was previously rejected under 102/103, while claim 21 was rejected under 103 by said Poettgen reference. Said rejections were withdrawn due Poettgen's teaching that the nonwoven layer was alternately on one surface or the other, rather than as the examiner previously understood the teaching to be simultaneously on both surfaces. However, it is asserted that said claims are obvious over the Poettgen teaching in that it would have been obvious to one skilled in the art to employ nonwoven surface layers on both sides of the laminate drape in order to produce a dual-sided absorbent and soft drape. Thus, claims 18-22 and 29 are rejected as being obvious over the cited art.

6. Claims 11, 13-17, and 27 stand rejected under 35 USC 103(a) as being unpatentable over WO 83/00356 issued to Ryan et al. in view of US 5,902,753 issued to DeMott et al. and US 5,741,582 issued to Leaderman et al., as set forth in section 8 of the last Office Action.

7. Claims 1, 4-9, and 23 stand rejected under 35 USC 103(a) as being unpatentable over US 4,790,591 issued to Miller in view of US 5,902,753 issued to DeMott et al. and US 5,741,582 issued to Leaderman et al., as set forth in section 9 of the last Office Action.

8. Claim 12 and 28 stand rejected under 35 USC 103(a) as being unpatentable over the cited Ryan, DeMott, and Leaderman as applied to claim 11 above, and in further view of US 4,560,245 issued to Sarver, as set forth in section 10 of the last Office Action.

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9. Claims 2, 3, 24, and 25 stand rejected under 35 USC 103(a) as being unpatentable over the cited Miller, DeMott, and Leaderman as applied to claim 1 above, and in further view of US 4,560,245 issued to Sarver, as set forth in section 10 of the last Office Action.

Allowable Subject Matter

10. Claims 10 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The cited prior art does not teach or suggest the blackout and thermal drapery lining of claim 1 further comprising a drapery fabric couple to the first side of the first layer of acrylic latex. Additionally, said art does not teach or suggest a method for making said drapery lining of claim 23 further comprising providing a fabric and coupling said fabric to the first layer of acrylic latex. Since Miller discloses a windshield cover, one would not be properly motivated to couple a drapery fabric thereto.

Response to Arguments

11. Applicant's arguments filed with the amendment of March 1, 2004, have been fully considered but they are not persuasive.

12. Applicant traverses the 103 rejections based upon the cited Ryan reference by asserting that the invention of Ryan is not a blackout drapery and thus, is non-analogous art. Additionally, applicant argues the secondary references of DeMott and Leaderman are also not blackout drapes. In response, it is argued that the recitation to a blackout drapery is a preamble limitation

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describing an intended use. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). As such, it is not given patentable weight at this time. Also note that claims 11-17, 27, and 28 are not limited to a light-impermeable layer.

13. Applicant also traverses the 103 rejections based upon Ryan by arguing that the present invention does not require the acrylic latex to be pigmented. This argument is unpersuasive in that the claims do not exclude the presence of a pigment. Thus, the above Ryan rejections are maintained.

14. With respect to the 103 rejections based upon Miller, applicant similarly argues that the references do not teach the claimed thermal drapery lining. As argued above, this preamble limitation is not given patentable weight at this time.

15. Applicant also traverses on the grounds that Miller requires at least one sealed air pocket, while the present invention does not. However, this argument is unpersuasive in that the claims do not exclude the presence of said air pockets. Thus, the above Miller rejections are maintained.

16. Applicant also traverses the above rejections based upon the ages of the references. This argument is unpersuasive since contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its

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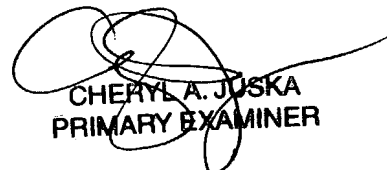
presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

Conclusion

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
May 17, 2004